



Public Scrutiny in Judicial Appointments - Brett Kavanaugh Issue

What is the issue?

\n\n

\n

- Brett Kavanaugh was sworn in as the 114th justice of the U.S. Supreme Court. Click [here](#) to know more on the appointment dispute.

\n

- The process followed for the Judge's appointment hold key lessons for the Indian judiciary.

\n

\n\n

What is the dispute?

\n\n

\n

- Kavanaugh is US President Trump's nominee for the Associate Justice of Supreme Court of the United States (SCOTUS).

\n

- But an American professor of psychology Christine Blasey Ford had accused him of sexual assault.

\n

- Kavanaugh had denied all allegations of sexual misconduct against him.

\n

- The issue went before the U.S.'s Senate Judiciary Committee.

\n

- Ultimately, he was confirmed as a judge, with the narrowest Senate confirmation in nearly a century and a half.

\n

- Eventually, he was sworn in as the 114th justice of the U.S. Supreme Court.

\n

- Nevertheless, the process allowed Ms. Christine to publicly recount her trauma of sexual abuse.

\n

\n\n

Why is this appointment process welcome?

\n\n

\n

- The political orientation of the nominees is likely that of the nominating government.
- So the process of confirmation in the US Senate checks publicly, the suitability for appointment as a judge.
- The process of public scrutiny checks if the nominee is capable of an objective approach to legal and constitutional reasoning.
- So in the US, the collegial approach spans the whole nation and virtually the world.
- It gives a wider scope in participating in national decision-making.

\n

\n\n

What is the case with India?

\n\n

\n

- No such process, as given above, occurs in India prior to the appointment of a judge.
- In India, the collegial impulses are confined to five learned men.
- A “collegium” of the five senior-most judges of the Supreme Court decides on appointment of judges to the Supreme Court or any other court.
- They consider names primarily from among chief justices of the high courts and occasionally from the bar.

\n

\n\n

Why is public scrutiny essential?

\n\n

\n

- The judges play a significant role of making crucial decisions for the country.
\n
- To mention some, they decide what people eat, what they can and cannot say, who they can have sex with and whether or not one can visit a temple.
\n
- They decide matters of life and death, guilt and innocence, detention and freedom, bail or jail.
\n
- There is no aspect of people's life which is not governed by the law and certainly, judges are the ultimate interpreters of the law.
\n
- But an opaque process in appointments impacts the legitimacy of the decisions of the court.
\n

\n\n

What does it call for?

\n\n

- \n
- A transparent process should replace the existing opaque process of appointment of judges.
\n
- Pre-appointment background checks must be made known through a process of public hearings.
\n
- This must include allegations of sexual harassment, wherein the contribution of the MeToo movement would help ensure accountability in the judiciary.
\n
- India, in all, needs a new process of appointment of judges and new criteria for evaluation to reflect public expectations.
\n

\n\n

\n\n

Source: Indian Express

\n



IAS PARLIAMENT

Information is Empowering

A Shankar IAS Academy Initiative